

* THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

C.R.P. Nos.2488 & 2495 of 2017

%04.01.2018

Between:

Nimmakayala Subba Reddy & another .. Petitioners

And

Madisetty Palankaiah & another ..
Respondents

Counsel for the petitioners : Sri G.Ramachandra Reddy

Counsel for the respondents : Sri J.Koti Reddy

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? CITATIONS:

1. AIR 2009 SC 1604
2. 2017 (5) ALT 69
3. (2011) 11 SCC 275
4. 2016 (3) ALD 162 (SC)
5. AIR 2001 SC 1158



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.2488 & 2495 of 2017

ORDER:

The revision petitioners are the defendants in O.S.No.223 of 2006 on the file of the Junior Civil Judge, Darsi, Prakasam District and the revision respondents are the plaintiffs in the suit. The suit is filed for the relief of permanent prohibitory injunction in respect of the plaint schedule property. The lower Court vide impugned orders dated 03.04.2017 in I.A.Nos.108 & 109 of 2017 allowed the applications, which were filed to re-open the plaintiffs' side evidence at the stage of arguments including to receive the documents on behalf of the plaintiffs by condoning the delay in earlier not filing. Impugning the same, the present Civil Revision Petitions are filed.

2. The contentions in the grounds of the present Civil Revision Petitions are that the impugned orders of the Court below are contrary to law and without basis and only meant for dragging on the matter by the plaintiffs, that was not properly analyzed by the trial Court in mechanically allowing, despite the earlier applications in I.A.Nos.16 & 17 of 2017, filed by the plaintiffs, were ended in dismissal and that operates as a bar and also for the reason the plaintiffs cannot be allowed to fill up the lacunae and fill the gaps and the

impugned orders of the lower Court are non-speaking and without reasons in the long pending case and without even mentioning the purpose, for which they want to examine whom, and without even considering the stage to file the documents, to receive with pleadings, expired long back and not even sought for filing before commencement of the evidence and even before completion of the evidence of plaintiffs, but at the fag end of arguments and thereby, the impugned orders are liable to be set aside by allowing the present Civil Revision Petitions.

3. During the course of hearing, learned counsel for the petitioners reiterated the same on behalf of the revision petitioners-defendants. Whereas, it is the submission of learned counsel for the respondents-plaintiffs that the impugned orders no way require interference by this Court while sitting in revision and hence, to dismiss the Civil Revision Petitions.

4. Heard both sides and perused the material on record.

5. A perusal of the impugned orders of the lower Court shows that there are no serious allegations raised in the counter to suspect the *bona fides* in the petitions to reopen the evidence of plaintiffs and to receive the documents sought for by the plaintiffs and hence, the petitions are

allowed on condition that the plaintiffs shall attend before the Court on the date of adjournment and also subject to costs of Rs.100/- to M.L.S.A. on or before 07.04.2017. The impugned orders are practically without reasons, without discussion, without even considering the affidavit petitions and the lengthy counters filed by defendant No.1. The affidavit petitions speak that plaintiff No.1 is giving affidavit on behalf of the two plaintiffs and also in the suit, filed for injunction against the defendants, saying the documents mentioned are obtained under the R.T.I. Act and the certified copies from the concerned authorities, that were not available at the time of filing of the suit viz., (i) certified copy of the registered Gift Settlement Deed, dated 10.03.1986, in the name of V.Mangamma and V.Kotaiah executed by T.Ramanamma (ii) F.L.R. copy for Survey No.257/ 1 stand in the name of M.Galaiah, issued under the R.T.I. Act and (iii) copy of endorsement of Tahsildar, Donakonda for acknowledging issue of F.L.R. copy to M.Palankaiah, that these documents are very essential to prove the plaintiffs' *bona fides* and their claim and thereby, it is just and necessary to condone the delay and receive the documents.

6. The averments in the counters, filed by the defendants in opposing the petitions, are that PW.1 was examined on 06.03.2013 and PW.2-plaintiff No.2 was examined on 22.01.2015 and on their side registered Sale Deed-Ex.A1 and Pattadar Passbooks and Title Deed-Exs.A2 to A4 were marked and the plaintiffs' side evidence was closed on 14.09.2015 after reporting no further evidence. Later defendant No.1 was examined as DW.1 and was not cross-examined by the plaintiffs initially, that was treated with no cross-examination. Thereafter, on the defendants' side DWs 2 and 3 were examined on 30.09.2016 and the plaintiffs filed a petition to recall PW1 and DW1 and the said petition was allowed on 04.11.2016 and the plaintiffs secured and filed further document viz. Ex.A5-Title Deed. After closure of the evidence the matter was posted for arguments to 18.11.2016, and again at the request of plaintiffs it was posted to 25.11.2016 for arguments and again it was posted to 02.12.2016. On that day, two petitions are filed and the same were returned. While the matter is coming for arguments, on costs of Rs.50/- payable by the plaintiffs the matter was posted to 09.12.2016 and again to 23.12.2016 that too the petitions filed on that day without notice to other side and without filing any document for reopening and recall PW1, and the Court allowed those petitions on 09.02.2017 and

posted to next day and again to 13.02.2017 on costs and on that day the further evidence of plaintiffs was closed, for no evidence produced, by posting the matter for arguments to 14.02.2017. Then these petitions are filed to reopen the evidence of PW.1 and to receive the documents with further chief examination. It is the claim in further chief examination affidavit that the plaint schedule property is the ancestral property of the vendor of plaintiffs and the documents now filed prove the same and however, there is no truth in it and thereby, the petitions are liable to be dismissed.

7. In fact, the lower Court, despite the seriously contested counters, ignored the same in saying as if from the contentions raised there is nothing to suspect the *bona fides* in the petitions. In fact, under Order XVIII Rule 17 C.P.C. it is to recall of any witness for any clarification in the evidence, let in by the parties, if required for the Court to put any question for the effective disposal of the suit. It is not the case herein.

8. The Apex Court in *Vadiraj Naggappa Vernekar (deceased by L.Rs.) v. Sharad Chand Prabhakar Gogate*¹, particularly referring to para 16, the provision Order XVIII Rule 17 C.P.C. is not meant to fill up the lacunas for the lack of earlier diligence, if any, to invoke to the prejudice of the

¹ AIR 2009 SC 1604

other party, but for only where the Court after evidence of both sides felt any necessity of pronouncements an effective verdict recall of any witness to put any questions by the Court and not otherwise, is not in dispute, but for to say, as referred in another expression of this Court in *Badana Mutyalamma and another v. Palli Appala Raju*², by subsequent expression of *K.K.Velusamy v. N.Palanisamy*³ and *Rama Rati v. Mange Ram (D) thr. L.Rs. and others*⁴, that as per Order XVIII Rule 17 C.P.C., it is not the right of the party but the power of the Court to sub-serve the ends of justice if at all to invoke irrespective of Court can allow even application moved by the party where it feels to sub serve the ends of justice and any recall of any witness is necessary and not otherwise. It is clearly held in the expressions of the Apex Court reiterated in *B.Mutyalamma supra* that this provision is introduced with the basic purpose postulated to enable the Court to clarify any position or doubt and the Court may either suo motu or on the request of the party, recall any witness at any stage and this can be exercised that any stage of the suit and once Court recalls the witness for purpose of any such clarification or otherwise, the Court may permit the parties to assist the Court by examining the witness for said

² 2017 (5) ALT 69

³ (2011) 11 SCC 275

⁴ 2016 (3) ALD 162 (SC)

purpose. However, it is not to fill up the lacunas or gaps, much less to the prejudice of the other side.

9. Even the case is not coming under Order XVIII Rule 17 C.P.C. the Court can permit further evidence invoking Section 151 C.P.C. as held in K.K.Veluswamy's case (supra 3) provided it must be to sub-serve the ends of justice and not otherwise. It is not even with such observation by considering on merits passed the orders by the lower Court and thereby, the impugned orders of the lower Court are unsustainable and require reconsideration. However, instead of sending back the matter to the lower Court and giving further life to the suit lies pending since the year 2006, this Court within its plenary jurisdiction can decide the issue by considering on merits.

10. Thus, from the above, coming to the merits in the petitions concerned, once the two documents, filed by the plaintiffs, viz., the certified copy of the registered Gift Settlement Deed, dated 10.03.1986, which is a public document, and not a new one created much less *pendentilite* and the other is F.L.R. copy for Survey No.257/ 1 stand in the name of M.Galaiah, S/o. Ramanaiah, that was obtained subsequently under the R.T.I. Act and when the affidavit petition speaks those documents were not available at the

time of filing of the suit and commencement of the evidence of plaintiffs, but were secured later for that fact not in dispute, but for earlier opportunities not availed and when these documents are necessary for the effective adjudication of the *lis*, the petitions can be allowed for recalling of PW1 to mark the documents, subject to costs of Rs.5,000/- (Rupees five thousand only) payable by the plaintiffs to the defendants within a week from the date of receipt of a copy of this order, for the trial Court to recall by fixing the date the PW1 for his further evidence to record and not to allow by any further chief examination affidavit. Further, while exhibiting the documents if there is any objection raised, the marking is subject to objections regarding the proof, relevancy and admissibility, to decide ultimately other than for stamp duty and registration required, if any, to decide instantaneously as laid down in the decision of *Bipin Shantilal Panchal v. State Of Gujarat*⁵.

Accordingly, and to the above extent the Civil Revision Petitions are partly allowed. Any non-compliance of the above directions nullifies enforcement of this order including the order of lower Court for all purposes, which tantamounts to allowing of the Civil Revision Petitions by setting aside the impugned orders of the lower Court to proceed with the

⁵ AIR 2001 SC 1158

matter from further stage by the trial Court without any further reference to this Court. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

04.01.2018

Note: L.R. copy to be marked
(B/O)
MVA

